

असाधारण

EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संस्था वी जाती है जिससे कि यह असग संकलन को रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 4th November, 1988:—

BILL No. 63 of 1988

A Bill further to amend the Constitution of India.

Bm it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1988.

Short title and commencement,

- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- 2. In article 16 of the Constitution, for clause (4), the following clause shall be substituted, namely:—

Amendment of article 16.

"(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of women or any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

Women in our country are suffering from many disabilities. In the matter of employment under the state their representation is very inadequate. Economic independence is the key to the emancipation of women. It can come only if the State takes suitable steps to provide them employment. As things are, in the absence of a statutory provision, providing more employment opportunities to women will remain a pious wish. The Constitution provides for reservation for the backward classes. The time has come when the Government should take decisive steps to make provision for reservation in services for women too. A suitable amendment of the relevant provision in the Constitution will enable the Government to proceed with necessary legislation in this regard.

Hence this Bill.

New Delhi; April 15, 1988 P. J. KURIEN

BILL No. 76 of 1988

A Bill to provide for reservation of posts in services and other financial benefits to scheduled caste converts and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

- 1. (1) This Act may be called the Scheduled Caste Converts (Reservation of Posts and other Benefits) Act, 1988.
 - (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- 2. In this Act, unless the context otherwise requires, "convert" means any person who originally belonged to a scheduled caste community and has embraced Christianity, Islam, Buddhism or any other religion in India.

Short title, extent and commence-

Dofinition.

ment.

Reservation and financial benefits to scheduled caste converts.

- 3. Notwithstanding anything contained in any other law for the time being in force, on the basis of the recommendations of the Commission set up under section 4,—
 - (i) appointments or posts under the State shall be reserved for the converts; and
 - (ii) the converts shall be given financial assistance and other benefits.
- Commission for Scheduled Caste Converts
- 4. (1) A Commission to be known as the "Commission for Scheduled Caste converts" shall be set up by the Central Government.
- (2) The Commission shall have a sitting Judge of a High Court as its Chairman and it shall consist of such number of other members as may be determined by the Central Government.
- (3) The function of the Commission shall be to study the social and economic conditions of the converts and to recommend to the Central Government suitable measures for their upliftment.

Power to make rules.

- 5. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) Every rule made by the Central Government under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if. before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Under the existing law, reservation and other benefits are conferred on scheduled castes who profess faith in Hinduism or Sikhism only. This has left out a very large number of people who have embraced other religions and are facing the same social and economic disabilities as are faced by the scheduled castes. The Constitution of India gives the right to freedom of conscience and free profession, practice and propagation of any religion. This right loses its significance and meaning when a section of the population is denied a certain dispensation of the State merely on the basis of religion. The converts need help from the State in order to improve their socio-economic status. This can be done only through a statutory provision providing for reservation and other benefits to these converts.

The Bill seeks to achieve this objective.

NEW DELHI;

P. J. KURIEN

April 15, 1988.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for giving financial assistance to Scheduled Caste Converts on the basis of the recommendations of the Commission. Clause 4 provides for setting up of the Commission for Scheduled Caste Converts with a sitting Judge of a High Court as its Chairman and consisting of such number of other members as may be determined by the Central Government. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. As the financial assistance to Scheduled Caste Converts is to be given on the basis of recommendations of the Commission, no precise estimate of expenditure can be given at this stage. However, a recurring expenditure of about rupees four lakks per annum is likely to be involved from the Consolidated Fund of India.

A non-recurring expenditure of about rupees two lakes is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill provides that the Central Government may make rules for carrying out the purposes of the Bill. The rules will relate to matters of detail only and as such delegation of legislative power is of a normal character.

BILL No. 70 of 1988

A Bill to protect the rights of a married woman and for matters connected therewith.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:---

1. This Act may be called the Married Women (Protection of Rights) Act, 1988.

Short title

2. In this Act, unless the context otherwise requires,—

Delinitions.

- (a) 'appropriate Government' means the Central or a State Government under whose employment the husband of the widow was at the time of his death;
 - (b) 'prescribed' means prescribed by rules made under this Act;
 - (c) 'property' means movable and immovable property;

whether ancestral or not, or whether acquired jointly with other members of the family or by way of accretion to any ancestral property of the husband of a married woman, and includes deposits of the husband in provident fund, banks, shares, any public saving scheme, ornaments, land and house.

Rights of married woman.

- 3. A married woman shall be entitled to the following rights, namely:—
 - (i) she shall have a right to live in the house of her husband whether owned by him or by his joint family without seeking judicial separation or divorce from her husband:

- (ii) she shall, without seeking judicial separation, be entitled to have food, clothing and other facilities and maintenance and support for herself from her husband, if she is unemployed;
- (iii) she shall be entitled to have an equal share in the property of her husband from the date of her marriage and shall have all proprietary rights over that property;
- (iv) she shall have a right of free access till her life to the children born out of the wedlock if they remain in the custody of her husband, irrespective of the dissolution of marriage;
- (v) she shall have an option to bring up the children separately, have their custody, maintain and provide education to them consistently by remaining in the family of her husband;
- (vi) she shall be consulted by her husband in the matters of family business and other financial transactions made out of the property of her husband or of the joint family; and
- (vii) shall have right to work in any manner she thinks fit and proper.

Rights of widows.

- 4. A widow shall be entitled to the following rights, namely:—
- (i) she shall, if eligible, be entitled to get suitable employment in the event of the death of her husband if he was an employee of the appropriate Government:
- (ii) she shall be entitled to pension, at such rates and on such conditions, as the appropriate Government may prescribe; and
- (iii) she shall have the first claim and absolute right in the property or business of her deceased husband.

Enforcedability of rights.

- 5. (1) The rights conferred by this Act shall be enforceable in a court of law or in a Lok Adalat.
 - (2) Any transaction or business entered into in violation of clause (vi) of section 3 shall be null and void.

Act to have overriding effect.

6. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act, or in any decree or order of any court, Tribunal or other authority.

Power to make rules. 7. The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

In the wake of independence, Indian woman has not only been able to recognise her status but has also made man recognise it. Nevertheless, the status of a woman is still far from being dignified in the Indian society. Although we are going to cross over to the 21st century, our attitude towards women is still that of the middle-aged feudal lords. Even today we are not prepared to grant the same liberty to women which men themselves are enjoying.

Today the real cause of the exploitation of a woman by her husband is that she has got no right in the House of her husband; she has got no right in the property of the husband. Even our laws confer the right of property on a woman only after the death of her husband and not during her coverture.

If a woman's right in the property of her husband is recognised the moment she marries, she will start feeling secure and will overcome her sense of helplessness and economic insecurity. This will minimise, if not eliminate, to a great extent the cases of separation and divorce whose basic reason is economic in many cases. What she will get on divorce, society should grant her during the existence of marriage. It is the most glaring injustice and indignity to woman that while she is a partner of the husband, the latter does not even think it neces. sary to inform her about his financial and family transactions leave alone consulting her in this regard.

The Bill seek to achieve the above objectives by granting women certain rights which the society has so far denied to her.

New Dechi; June 30, 1988 BAŞAVARAJESWARI

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill empowers the Central Government to make rules to give effect to the provisions of this Bill. The delegation of legislative power is of a normal character.

BILL No. 75 of 1988

A Bill to provide for ban on pre-birth sex determination tests and for matters connected therewith.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

title. Short 1. This Act may be called the Banning of Sex Determination Tests Act, 1988.

Defini-

2. In this Act, unless the context otherwise requires, 'sex determination test' means scientifically gaining knowledge of the sex of the foetus by means of use of amniocentesis or other modern techniques used on the pregnant women to determine the sex of the foetus.

Ban on pre-birth sex dtermination tests

3. All types of pre-birth sex determination tests are hereby banned.

Punish.

- 4. Notwithstanding anything contained in any other law for the time being in force,—
 - (a) any medical practitioner or any person who conducts any test to determine the sex of the foetus in a pregnant woman; and
 - (b) any expectant mother who undergoes such pre-birth sex determination test,

shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to five thousand rupees or with both.

Power to make rules. 5. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Sex determination test centres are being operated for the last so many years in our country. Many people have earned a lot of money by operating such centres. These tests are now increasingly been used by the parents and the medical practitioners for pre-birth sex determination with the intention of aborting the female foetus. If this is allowed to continue, it would result in imbalance in male-female ratio in the country. This is high time that a legislation is brought forward to ban such tests in the country.

Hence this Bill.

New Delhi; June 30, 1988. **BASAVARAJESWARI**

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. These rules will relate to matters of detail only and as such the delegation of legislative power is of a normal character.

BILL No. 90 of 1988

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Amendment) Act, 1988.

Amendament of article 185,

- 2. Article 155 of the Constitution shall be re-numbered as clause (1) thereof and after clause (1) as so-re-numbered, the following clause shall be inserted, namely:—
 - "(2) The President shall, while appointing the Governor of a State, take into consideration the views, if any, of the Chief Minister of the State."

Consultation by the Union Government with the Chief Minister of a State for the appointment of Governor of that State is considered essential for healthy Centre-State relations. Although the Union Government claims that such consultation does take place, there are instances when such consultation did not take place. It may be pointed out that sometimes Union Government merely informs the Chief Minister concerned about its decision appointing the Governor. Intimation of the decision does not amount to consultation which involves a procedure as well as inter-actions. It means the ascertainment of the views of the Chief Minister as to the suitability of the person proposed to be appointed as the Governor.

The framers of the Constitution did not incorporate the procedure in specific terms but left its evolution to practical experiences in this regard. The practical experiences, however, show that the process of consultation can be ensured if it is incorporated in the Constitution itself.

Hence this Bill.

New Delhi; July 13, 1988. S. M. GURADDI

BILL No. 88 of 1988

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

Short title.

Substitution of new article for article 263.

Establiashment of an Inter-State Council.

- 1. This Act may be called the Constitution (Amendment) Act, 1988.
- 2. For article 263 of the Constitution, the following article shall be substituted, namely:—
 - "263. (1) The President by order shall establish an Inter-State Council charged with the duty of—
 - (a) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
 - (b) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and programme with regard to that subject;
 - (c) resolving disputes relating to land, water, border, etc. which may have arisen between States and which are referred to the Council for their verdict.
 - (2) The President may by order define and elucidate the nature of the duties to be performed by the Council and its organisation and procedure.".

Article 263 of the Constitution gives the President discretionary power to set up an Inter-State Council for the purpose of co-ordination between the States. Nearly four decades have elapsed since the Constitution came into force, but the forum which is provided for a free and uninhibited discussion on Centre-State relations, an Inter-State Council, has not been set up.

At their recent meeting, Chief Ministers of some States have also urged the Centre to set up immediately an Inter-State Council as provided for in article 263 of the Constitution.

It is, therefore, necessary to institutionalise the interaction between the States and the Centre, on significant issues involving them.

Hence this Bill.

New Delhi; July 13, 1988. S. M. GURADDI

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for the establishment of an inter-State Council. There will be some expenditure in respect of salaries and allowances to the staff which shall have to be engaged for carrying out the day to day work of the Council. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees five lakhs per annum,

It is also likely to involve a non-recurring expenditure of about rupees fifty lakhs on provision of office building, furniture, etc. to the Council.

BILL NO. 92 OF 1988

A Bill to provide for right to work to all citizens and for matters condected therewith or incidental thereto.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Right to Work Act, 1988.

(2) It extends to the whole of India,

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. In this Act-

Definitions.

- (i) 'Central Board' means a Board set up by the Central Government under section 4;
- (ii) 'State Board' means a Board set up by a State Government under section 8 and includes a Board set by the Union territories.

Short

title, extent and

and commence-

ment.

Right to work.

- 3. (1) All citizens shall have the right to work to the extent provided in this Act upon completion of twenty-one years of age and until he attains age of superannuation as may be prescribed.
- (2) The right to work shall be enforceable in the manner provided in this Act and as prescribed by rules made under this Act.

Setting
up of
Central
Employment
Board

- 4. (1) The Central Government shall set up a Board to be known as the Central Employment Board.
 - (2) The Central Employment Board shall comprise of the following: —
 - (i) The Prime Minister, who shall be the Chairman of the Board;
 - (ii) the Minister of Industry;
 - (iii) the Minister of Labour;
 - (iv) the Minister of Human Resource Development;
 - (v) the Minister of Planning;
 - (vi) the Minister of Agriculture; and
 - (vii) five Members of Parliament, three of whom shall be elected by Lok Sabha and two to be elected by Rajya Sabha;
 - (viii) one member from the managements of public sector industries under the Control of the Central Government to represent the managements and one to represent the trade unions representing workers employed in such public sector industries;
 - (ix) one member to represent managements of industries in private sector and one member to represent workers employed in private sector;
 - (x) one member to represent agriculture (including dairy and horticulture) and one member to represent agricultural labour;
 - (xi) five experts in the field of economics, sociology, industry, labour employment and agriculture including dairy and horticulture;
 - (xii) two members to represent working women;
 - (xiii) one member to represent each of the State Governments and Union territories.

Explanation: Members referred to in clauses (viii) to (xii) shall be nominated by the Central Government and members to represent the State Governments and Union territories shall be nominated by the Governments concerned.

(3) The Central Board shall have powers to take such measures as are necessary for enlarging the scope of employment in public sector and private sector in relation to those subjects to which the executive powers of the Central Government extend.

5. (1) The Central Board shall set up a Standing Committee (hereinafter referred to as the Central Standing Committee) from among its members which shall consist of not more than seventeen members to exercise all the powers of the Board during the period between the meetings of the Board.

Settlng up of Central Standing Committee.

- (2) The Board may set up sub-committees as may be deemed fit.
- 6. (1) There shall be set up by the Central Government an Employment Authority (hereinafter referred to as the Central Authority) consisting of three members to be appointed by the Central Board.

Setting up of Central Employment Authority.

(2) The Central Authority shall have powers to give such directions to the employers in general or specified employers in particular to take such steps as are deemed necessary by the Authority to enlarge the scope of employment in the establishment under the employer concerned.

> Appeal to Central Standing Committee.

up of

State

ment

Board.

7. Any person aggrieved by a direction issued by the Central Authority may file an appeal to the Central Standing Committee and the decision of the Contral Standing Committee shall be final.

> Setting Employ-

- 8. (1) Every State Government and administration of Union territory shall set up for territories under their respective jurisdiction a Board to be known as State Employment Board.
 - (2) The State Employment Board shall comprise of the following: --
 - (i) The Chief Minister of the State or the Union territory, as the case may be, who shall be the Chairman of the Board;
 - (ii) The Minister of Industry;
 - (iii) The Minister of Labour;
 - (iv) The Minister of Education;
 - (v) The Minister of Planning;
 - (vi) The Minister of Agriculture;

Note: In Union territories where there is no Legislature, the Lieutenant Governor/Administrator shall be the Chairman of the Board and the Secretary to the Government, in-charge of the corresponding department, shall be a member of the Board.

- (vii) five members of the State Legislature and where the Legislature consists of two Houses, three Members shall be elected by the Legislative Assembly and two Members shall be elected by the Legislative Council;
- (viii) one member from the managements of public sector undertakings under the control of State Government concerned to represent the management and one member to represent the trade unions representing workers employed in such public sector undertakings:
- (ix) one member to represent industries in private sector and one member to represent workers employed in private sector;

- (x) one member to represent agriculture (including dairy and horticulture) and one member to represent agricultural labour;
- (xi) five experts in the field of economics, sociology, industry, labour employment and agriculture including dairy and horticulture;
 - (xii) two members to represent working women.
- (3) The State Board shall have powers to take steps for enlargement of the scope for employment in public sector and private sector in relation to the subjects to which the executive powers of the State Government extend.

State Standing Committee.

- 9. (1) The State Board shall set up a Standing Committee (hereinafter referred to as the State Standing Committee) from among its members which shall consist of not more than eleven members to exercise all the powers of the Board during the period between the meetings of the Board.
- (2) The State Board may set up sub-Committees as may be deemed fit.

Setting
up of
State
Employment
Authority.

- 10. (1) There shall be set up by every State Government and Union territory administration an Employment Authority (hereinafter referred to as the State Authority) consisting of three members to be appointed by the State Board.
- (2) The State Authority shall have powers to give such directions to the employers in general or specified employers in particular to take such steps as may be deemed necessary by the Authority to enlarge the scope of employment in the establishment under the employer concerned.

Appeal to State Standing Committee. 11. Any person aggrieved by a direction issued by the State Authority may file an appeal before the Standing Committee and the decision of the Standing Committee thereon shall be final.

Employer to abide by directions of Authorities.

- 12. (1) It shall be the duty of the employers to abide by directions given by the Central Authority or the State Authority, as the case may be.
- (2) No employer shall reduce the strength of establishment under his control without previous approval of the Central Authority or the State Authority, as the case may be.

Employment
Exchanges.

13. Employment Exchanges shall be under the control of the respective Authorities.

Register of unemployed persons.

- 14. (1) There shall be maintained by every State Authority a Register of unemployed citizens of twenty-one years of age and above.
- (2) The names shall be retained in the Register until the citizens secures an employment or until he attains the prescribed age of superannuation, whichever is earlier.

15. The Central and State Boards shall endeavour to secure employment for unemployed persons registered in the Registers maintained by State Authorities.

Boards to endcavour to secure employment to unemployed.

16. All persons whose names have been registered and have not secured employment consistent with their qualifications and experience shall be entitled to unemployment allowance at the prescribed rates.

Unemployment allowance

17. (1) The Central Authority or the State Authority, as the case may be, shall have powers to impose such conditions as are deemed necessary in order to enlarge the scope of employment in the establishment, industry or commercial or business or agricultural activity in respect of which the respective Government has granted any loan, subsidy, incentive or given any contract for supply of goods or rendering of services to or execution of any work of the Government.

Employment Authorities to impose conditions on employers.

- (2) The Government may impose special conditions in order to give priority in providing employment to citizens belonging to Scheduled Castes Scheduled Tribes, socially and educationally backward classes, minorities and women.
- 18. (1) The Central Board shall have powers to impose and collect from the employers a special levy not exceeding ten per cent of Income Tax or Corporate Tax payable by the employer concerned in order to raise funds to meet the expenditure required to be incurred for paying unemployment allowance.

Imposition of levy.

- (2) The Central Board shall have powers to exempt any employer from paving the levy for such period as may be specified by the Board if the Board is satisfied that the employer is ready and willing to enlarge the scope of employment in the establishment under his control to such an extent as may be approved by the Board over and above the compliance of directions that may be given by the Central or State Authority, as the case may be.
- (3) The proceeds of the levy shall be credited to the Consolidated Fund of India
- 19. (1) The expenditure to be incurred on payment of unemployment allowance shall be made from the Consolidated Fund of India.
- (2) The State Governments shall contribute to the Central Government in this behalf as may be prescribed from time to time in consultation with the Finance Commission.
- Expenditure to be incurred from Consolidated Fund of India.
- 20 (1) The unemployment allowance payable under this Act shall be deemed to be wages within the meaning of the Payment of Wages Act, 1936, and shall be recoverable from the Central Government.
- tion of Payment of Wages Act, 1936.

Applica-

(2) The Payment of Wages Act 1936 shall be deemed to apply to the persons and establishments covered under this Act as if the claimant is an employee.

4 of 1936.

Punishment.

- 21. (1) Any employer who contravenes the provisions of this Act shall be liable to be punished with imprisonment which may extend to three years and fine which may extend to rupees fifty thousand in the first instance and rupees ten thousand per day in the event of continued failure to carry out the directions.
- (2) In the case of companies, every person who at the time the offence was committed was in charge of and was responsible for the conduct of the business of the company as well as the company and each of the directors including the Chairman shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that the prosecution against the company or the persons aforesaid shall abate only on account of winding up of the company.

- (3) The offence under this Act shall be triable by a Sessions Court and shall be cognizable and non-bailable.
- Blacklisting of employers convicted under this Act.
- 22. The Government concerned shall have powers to direct, in consultation with the Board concerned, that the employer who is convicted under this Act may be black-listed and accordingly excluded from any benefit given by the Government concerned or any Government agency or any agency partly or wholly financed by the Government concerned in the matter of loan, subsidy, incentive or any contract for supply of goods or rendering of service to or execution of any work of the Government concerned or of such agency.

Power to make rules.

- 23. (1) The Central Government shall have powers to make rules for effective implementation of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (i) the powers and functions of the Central and State Boards, the Central and State Standing Committees and the Central and State Employment Authorities.
 - (ii) the terms and conditions of appointment of members of the Boards, Standing Committees and the Employment authorities;
 - (lii) the qualifications and emoluments of members of the Employment authorities;
 - (iv) the rate of levy and the mode of its recovery and adjudication of disputes regarding the liability to levy and quantum thereof;
 - (v) the procedure of maintaining registers of unemployed citizens and machinery to adjudicate claims for entry in the said registers:
 - (vi) the rate of unemployment allowance and the mode of payment thereof;
 - (vii) the schemes for enlargement of scope of employment and offering jobs to the unemployed; and
 - (viii) any other matter necessary for carrying out the purposes of this Act.

Article 41 of the Constitution of India provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

As provided in article 37, the Directive Principles of State Policy are not enforceable by any Court but are nevertheless fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws.

India has entered 39th year of the Republic. It is now considered necessary that 'right to work' within the limits of its economic capacity and development of India should be made justiceable. Several trade unions have asked for realisation of right to work.

In the absence of enough opportunities of employment, certain public assistance should also be provided for.

The Bill seeks to achieve the said object.

New Delhi; February 25, 1988.

HAROOBHAI MEHTA

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. DGET-H-11019(3)/88-MP(G), dated 13 July 1988 from Shri Bindeshwari Dubey, Minister of Labour to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of "The Right to Work Bill, 1988" by Shri Haroobhai Mehta, M.P., recommends, under articles 117(1) and 274(1) of the Constitution, its introduction and also recommends, under article 117(3) of the Constitution, the consideration of the Bill in Lok Sabha.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides that all citizens who have completed 21 years of age shall have the right to work. Clause 4 provides for setting up of a Central Employment Board by the Central Government. Clause 6 provides for setting up of Central Employment Authority by the Central Government. Clause 8 provides that every State and Union territory Government shall set up a State Employment Board. Clause 10 provides that Employment Authority shall be set up by the State Government and Union territory. Clause 14 provides that Employment Authorities shall maintain Registers of unemployed citizens. Clause 15 provides that the Central and State Boards shall endeavour to secure employment for unemployed persons. Clause 16 provides that all persons who have registered themselves and not secured employment shall be entitled to unemployment allowance. Clause 19 provides that expenditure to be incurred on payment of unemployment allowance shall be made from the Consolidated Fund of India.

There will be some expenditure in respect of setting up of Central Board and Central Authority and salaries and allowances of members of Central Authority. The Central Government would also have to incur expenditure in respect of setting up of Board and Authority in Union territories.

The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. Part of the expenditure, however, shall be met out of collection of levy imposed on employers. However, it is estimated that an annual recurring expenditure of about rupees one hundred crores is likely to be involved from the Consolidated Fund of India.

A non-recurring expenditure to the tune of about rupees one crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 23 of the Bill empowers the Central Government t_0 make rules for effective implementation of the Bill. These rules will relate to matters of detail only. As such, the delegation of legislative power is of a normal character.

BILL No. 108 of 1988

A Bill to provide for the establishment of a permanent Bench of the Highlest Court of Orissa at Berhampur.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

1. This Act may be called the High Court of Orissa (Establishment of a Permanent Bench at Berhampur) Act, 1988.

Short title,

2. There shall be established a permanent Bench of the High Court of Orissa at Berhampur and such Judges of the High Court of Orissa, being not less than two in number, as the Chief Justice of that High Court may from time to time nominate, shall sit at Berhampur in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the districts of Ganjam, Koraput and Phulbani.

Establishment
of a
Permanent
Bench of
High
Court of
Orissa at
Berhampur

There is pressing need and justification for locating a permanent Bench of the High Court of Orissa at Berhampur in the interest of administration of speedy and cheap justice and convenience of the litigant public in the districts of Ganjam, Koraput and Phulbani.

The Bill provides for the establishment of such a Bench.

New Delhi; August 2, 1988. SOMNATH RATH.

BILL No. 99 of 1988

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

- 1. (1) This Act may be called the Constitution (Amendment) Act, 1988.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- 2. In article 141 of the Constitution, the following proviso shall be added at the end, namely:—

"Provided that when the Supreme Court, through judgement, proposes to declare a law, it shall distinctly pronounce the same as such, at the end of the judgement, and the law so declared through the judgement and not any other part of the judgement shall be read or deemed as law declared by the Supreme Court.".

Short title and Commencement

Amendment of article 141,

As per article 141 of the Constitution, "law declared by the Supreme Court shall be binding on all courts within the territory of India."

Making of laws is, besically, the function of the legislature. But laws cannot be fully exhaustive as they cannot provide for every contingency. Therefore, during the course of the interpretation of Acts of Parliament and State Legislatures, law develops further. However, since judgements pronounced by the Supreme Court run into several pages, it is difficult to locate that part of the judgement which could be construed as being law declared under article 141. The said law, having the effect of binding the entire country, has to be within the understanding and grasping capacity of every citizen. When legal practitioners themselves take hours to arrive at a conclusion as to the nature of the exact law declared by the Supreme Court through a judgement, less maid the better about the average citizen.

Hence, the proposed amendment to provide for a requirement that the Supreme Court should declare the law in a distinct manner as being the law declared under article 141 of the Constitution.

NEW DELHI; August 3, 1988. SHANTARAM NAIK.

BILL No. 95 OF 1988

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1988.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In article 344 of the Constitution, in clause (1), the words "representing the different languages specified in the Eighth Schedule" shall be omitted.

3. In article 351 of the Constitution, the words "specified in the Eighth Schedule" shall be omitted.

4. The Eighth Schedule to the Constitution shall be omitted.

Short title and commencement.

> Amendment of article 344.

Amendment of article 351.

Omission of the Eighth, Schedule.

At present, the Government of India is not apparently in a position to add any language to the Eighth Schedule to the Constitution. Several languages, in fact, deserve to be included in the said schedule. 'Konkani' which is the language of Goan people as also lakhs of people on the West Coast, does not find a place in the Constitution. After the liberation of Goa, no amendment was made to the Eighth Schedule so as to include Konkani in it.

Although the Government claims that there is no distinction made by them, as regards development, between the languages recognised by the Eighth Schedule and the languages not so recognised, yet, in reality it makes a substantial difference.

The proposed amendment seeks altogether to do away with the Eighth Schedule to the Constitution, so that the Government may, by an ordinary law, regulate the development of all languages.

NEW DELHI; August 3, 1988. SHANTARAM NAIK.

BILL No. 94 OF 1988

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1988.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Preamble to the Constitution, after the word "DEMOCRATIC", the word "PEACE-LOVING" shall be inserted.

Short title and commencement

Amendment of the Preamble.

In the Preamble to the Constitution, just as the word "SOCIALIST" was inserted at a later stage to indicate the exact principles to which this great country stands for, the expression "PEACE-LOVING" has to find a place in our Constitution, not only to reflect the basic ideology of Mahatma Gandhi therein but also to demonstrate to the world our true and genuine intentions towards peace. Incorporating the expression in the Constitution would render ourselves more committed towards the goal of peace.

Hence this Bill.

New Delhi; August 3, 1988, SHANTARAM NAIK.

BILL No. 98 or 1966

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

Short title and commencement.

- 1. (1) This Act may be called the Constitution (Amendment) Act, 1988.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- 2. In article 143 of the Constitution, in clause (1), after the words "of such public importance", the words "and also, law on the concerned question of law and fact being not clear and" shall be inserted.

Amendment of article 148,

Under article 143, the President of India, no doubt, is authorised to refer any matter of public importance to the Supreme Court for its opinion. Normally, the President would refer only those matters with respect to which the law of the land is not clear. However, this implied condition precedent has not been provided for in article 143.

Hence, to make the article more explicit, the proposed amendment is required.

New Delhi; August 3, 1989. SHANTARAM NAIK

Bill No. 109 of 1988

A Bill to regulate foreign visits by the President, Prime Ministen and other Members of the Union Council of Ministers.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

- 1. (1) This Act may be called the Foreign Visits by the President and Members of the Council of Ministers Act, 1988.
 - (2) It shall come into force at once.
- 2. The Prime Minister, before leaving the country on a foreign visit, shall authorise another member of the Council of Ministers to exercise the powers and perform the functions of the Prime Minister in his absence.

Short title and commencement.

Performance of functions of the Prime Minister in his absence.

infor mation to Parliament on foreign visits. 3. The President and the Prime Minister shall, before leaving the country on an official or a private visit abroad, inform Parliament about their intended visit:

Provided that the President and the Prime Minister shall so arrange their programme for visits abroad as not to be out of the country at the same time.

Foreign
visits by
members
of
Union
Council
of
Ministers.

Foreign

of Council

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visits **by**

members

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tories.

- 4. A member of the Union Council of Ministers, other than the Prime Minister, shall not leave the country on an official or a private visit abroad without the formal approval of the Prime Minister and without making appropriate alternative arrangement for the conduct of official business in his absence in consultation with the Prime Minister.
- 5. (1) The Chief Minister or the Chief Administrator of any Union territory shall not leave the country on an official or a private visit abroad without the formal approval of the Prime Minister.
- (2) A member of the Council of Ministers of any Union territory, other than Chief Minister or the Chief Administrator, shall not leave the country on an official or a private visit abroad without the formal approval of the Chief Minister or the Chief Administrator of the Union territory concerned and the concurrence of the Central Government.

In several democratic countries the Heads of the States or the Heads of the Governments take formal approval of their Legislature before leaving the country. There has been one occasion recently when both the President and the Prime Minister have been out of the country at the same time. The decision making machinery at the highest level comes to a halt in the absence of the Head of the State/Government and matters of the State are handled by remote control. It is felt that the Head of the State and the Government should formally communicate their plan of foreign visit to the Parliament and arrange for efficient conduct of official business during their absence. The same applies to the members of the Union Council of Ministers.

NEW DELHI;

August 4, 1988.

SYED SHAHABUDDIN

BILL No. 111 of 1988

A Bill further to amend the Official Languages Act, 1963.

B_E it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

Short title and commencement.

- 1. (1) This Act may be called the Official Languages (Amendment) Act, 1988.
 - (2) It shall come into force at once.

Amendment of section 3.

2. In section 3 of the Official Languages Act, 1963, for sub-section (4), the following sub-section shall be substituted, namely:—

19 of 1963.

"(4) The Central Government may, by notification in the Official Gazette, direct the use of a language or languages other than the English or Hindi Language, which is spoken by atleast ten per cent of the population of a State or a Union territory as a whole or of a district thereof, for specified official purposes by the Central Government Offices, sub-offices, attached offices or undertakings, located in that State or Union territory or district thereof, as the case may be, and in making such notifications due consideration shall be given to the interests of the local population and to the need for effective public contact and public information and for quick and efficient disposal of the official business:

Provided that persons serving in connection with the affairs of the Union and having proficiency either in Hindi or in the English language shall not be placed at a disadvantage on the ground that they do not have proficiency in both the languages.".

Many Central Government departments have subordinate and attached offices and undertakings located at places where Hindi is not widely spoken. In such places, particularly in matters which require contact with the local population and the communication to them in English or Hindi or both cannot serve the purpose of the administration. As such, in such places where atleast ten per cent of the people speak a language or languages other than Hindi or English, such language or languages should also be utilised for specified official purposes. These purposes and the places can be specified by notifications issued from time to time. The proposed Bill enables the Central Government to issue such notifications wherever circumstances so demand.

NEW DELHI; August 4, 1988. SYED SHAHABUDDIN

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to empower the Central Government to provide for the use of a language or languages, other than the Hindi or English languages, spoken by atleast ten per cent of the population of a State or Union territory as a whole or of a district thereof for official purposes in the Central Government offices located in that State or Union territory. In that case, forms, etc. used in the Central Government offices of such areas will have to be printed in such language or languages. Some expenditure may also have to be incurred in respect of purchase of typewriters of the language(s) to be used in the offices. The Bill, if enacted, therefore, will involve expenditure from the Consolidated Fund of India. It is likely to involve an annual recurring expenditure of about rupees ten lakhs.

A non-recurring expenditure of about rupees two lakhs is also likely to be involved from the Consolidated Fund of India.

BILL No. 113 of 1988

A Bill further to amend the Constitution (Scheduled Castes) Order, 1950

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:-

1. (1) This Act may be called the Constitution (Scheduled Castes) Order (Amendment) Act, 1988.

(2) It shall come into force at once.

title and commence-

Short

ment.

2. In the Constitution (Scheduled Castes) Order, 1950, in paragraph 3, the following proviso shall be added at the end, namely:-

Amendment of paragraph 3.

"Provided that a member of the Scheduled Caste, on conversion to any other religion from the Hindu or Sikh religion, as well as his wife and children, shall continue to receive the benefits which they were entitled to as members of the Scheduled Caste before such conversion.".

C. O. 19.

Under the Constitution of India, every citizen is free to profess and practise a religion of his choice. Also, under the Constitution of India, the safeguards and facilities available to the Scheduled Castes and Scheduled Tribes are not related to any particular religion. However, in actual practice Scheduled Castes are generally presumed to follow the Hindu religion. This has resulted, under the Constitution (Scheduled Castes) Order, 1950, as amended in 1956, that on change of religion from the Hindu or Sikh religion to any other religion, persons belonging to Scheduled Castes are denied the benefits available to them before comversion. This is neither fair nor equitable because the persons concerned or their family continue to be treated as social out-castes and are subjected to social discrimination. It is a well-known sociological fact that the caste system is prevalent in a greater or lesser degree among all religious groups including Muslims and Christians. Change of faith does not immediately elevate the social status as the family continues to exist within the same social milieu.

In order to continue to receive the benefits as a member of the Scheduled Caste a person inclining to change his religion does not exercise his fundamental right. Thus, the Order by discontinuing benefits to a person who changes his religion protects a particular religion.

It is proposed that the benefits available under the Constitution to a member of the Scheduled Caste, who changes his religion, should continue to be available to him and his immediate family, so long as they are alive but not to the next generation.

Hence the Bill.

New Delhi; August 11, 1988. SYED SHAHABUDDIN

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides that a member of the Scheduled Caste on conversion from the Hindu or Sikh religion to any other religion, as well as his wife and children, shall continue to receive the benefits which they were entitled to before such conversion. This would mean that all such Scheduled Castes who convert to any other religion shall get the benefits extended to other Scheduled Castes. Students will get facilities like free education, hostel and scholarships, etc. in schools and The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India in respect of such Scheduled Castes residing in Union territories. The State Governments would incur expenditure from their respective consolidated funds in respect of such Scheduled Castes residing in the respective States. However, the Central Government would have to extend financial assistance to State Governments for implementing the provisions of this Act. It is estimated that an amount of rupees one crore per annum is likely to be involved from the Consolidated Fund of India by way of recurring expenditure.

A non-recurring expenditure of about rupees five lakhs is also likely to be incurred.

45 of 1860.

BILL No. 112 of 1988

A Bill further to amend the Commissions of Inquiry Act, 1952.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

Short title and commencement.

- 1. (1) This Act may be called the Commissions of Inquiry (Amendment) Act, 1988.
 - (2) It shall come into force at once.

Amendment of section

- 2. In section 5 of the Commissions of Inquiry Act, 1952, for sub-section 60 of 1952.

 (4), the following sub-sections shall be substituted, namely:—
 - "(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may cause the offender to be detained in custody and may, at any time on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to imprisonment of either description for a term which may extend to two years or with fine which may extend to two thousand rupees or with both.
 - (4A) An appeal shall lie to the Supreme Court against any judgement of conviction passed under sub-section (4)".

It has become a common practice for certain persons to frustrate the objects of the Commissions of Inquiry Act, 1952 and the inquiries conducted by the Commissions by adopting the simple device of refusing to testify before the said Commissions and then relying upon dilatory criminal proceedings in magistrates' courts. The Commissions of Inquiry are usually presided over by Judges of eminence and experience and it is incongruous that they should have to file complaints before lower criminal courts. It is essential to arm the Commissions of Inquiry with necessary powers to prevent obstruction in their proceedings. The proposed amendment serves the said purpose.

NEW DELHI, August 11, 1988. MADHU DANDAVATE

BILL No. 110 of 1988

A Bill further to amend the Indian Telegraph Act, 1885.

Bz it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

Short tike and commencement,

- 1. (1) This Act may be called the Indian Telegraph (Amendment) Act, 1988.
 - (2) It shall come into force at once.

Amendment of section 5. 2. In section 5 of the Indian Telegraph Act, 1885, in sub-section (2), before the existing proviso, the following proviso shall be inserted, namely:—

13 of 1885.

"Provided that the power vested in the Central Government or a State Government shall be exercised personally by the Head of the Government concerned, on a case by case basis:".

STATEMENT OF OBJECTS AND REASONS

At present, the power of the Central Government or a State Government to intercept telephonic communication or telegraphic transmission is being exercised informally or on the basis of directions communicated at the official level. Since the right to privacy is sacrosanct and may only be interfered with in extreme circumstances in the national interest, several democratic States including the U.K. and the U.S.A. have adopted the practice that every case for interception shall be personally approved at the level of the political executive.

In view of the wide-spread impression that telephones are being widely tapped for political, and even for personal, reasons, at the whim and fancy of officials who may or may not take the political executive into confidence, the present system appears to be liable to misuse and it is suggested that every case of this nature should be specifically approved on the basis of facts thereof, by the head of the Government concerned.

Hence this Bill.

NEW DELHI;

SYED SHAHABUDDIN

August 16, 1988.

SUBHASH C. KASHYAP, Secretary-General.